

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



STATIONARY ENGINEERS LOCAL 39,
INTERNATIONAL UNION OF OPERATING
ENGINEERS, AFL-CIO,

Charging Party,

v.

COUNTY OF YOLO,

Respondent.

Case No. SA-CE-704-M

Request for Reconsideration
PERB Decision No. 2316-M

PERB Decision No. 2316a-M

June 28, 2013

Appearance: Weinberg, Roger & Rosenfeld by Stewart Weinberg, Attorney, for Stationary Engineers Local 39, International Union of Operating Engineers, AFL-CIO.

Before Martinez, Chair; Huguenin and Banks, Members.

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on a request for “clarification” by the Stationary Engineers Local 39, International Union of Operating Engineers, AFL-CIO (Local 39) of the Board’s decision in *County of Yolo* (2013) PERB Decision No. 2316-M. The PERB administrative law judge (ALJ) had concluded in a proposed decision that the County of Yolo (County) did not violate its local rules with respect to a representation petition (for unit modification, recognition and decertification¹) filed by the Yolo County Probation Association (YCPA) on behalf of Probation Department peace officers who no longer wished to be in the General Unit represented by Local 39. The ALJ therefore dismissed the complaint and underlying unfair practice charge. Local 39 filed exceptions.

¹ The request for decertification was ultimately abandoned.

The Board reversed the conclusion reached by the ALJ. The Board concluded that the County had violated its local rules, and therefore the Meyers-Milias-Brown Act (MMBA),² in its handling of YCPA's representation petition. As the Board held, while the County did not violate its local rules in modifying the General Unit consistent with the peace officers' right to a separate unit under section 3508, subdivision (a), the County did violate the local rules in adding the Probation Department peace officer classifications to an existing bargaining unit of investigators represented by the Yolo County Investigators Association (YCIA). YCIA had not petitioned for the Probation Department peace officer classifications. The County, therefore, was wrong to act as though it had received a petition from YCIA to that effect. Given the County's misplacement of the Probation Department peace officer classifications into the YCIA-represented bargaining unit, the Board deemed that the recognition component of YCPA's petition attached at the time that the General Unit was modified by the Board of Supervisors on November 9, 2010.

In agreeing with Local 39 that the County violated its local rules, the Board found Local 39 to be the prevailing party. The request for "clarification" was filed, however, not by the County, but by Local 39. Local 39 takes issue with the Board's remedial order, which did not require that the Probation Department peace officer classifications be returned to the General Unit. For purposes of this decision, the Board treats Local 39's request for clarification as a request for reconsideration. (See *Los Angeles County Office of Education (Burton)* (1999) PERB Decision No. 1360 [failure to label a pleading as a request for reconsideration not fatal].) The County declined to file a response.

The Board has reviewed Local 39's submission and, based on this review, the Board denies Local 39's request for reconsideration for the reasons discussed below.

² The MMBA is codified at Government Code section 3500 et al. All further statutory references are to the Government Code.

DISCUSSION

Requests for reconsideration of a final Board decision are governed by PERB

Regulation 32410, subdivision (a),³ which states in full:

Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. An original and five copies of the request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. The grounds for requesting reconsideration are limited to claims that: (1) the decision of the Board itself contains prejudicial errors of fact, or (2) the party has newly discovered evidence which was not previously available and could not have been discovered with the exercise of reasonable diligence. A request for reconsideration based upon the discovery of new evidence must be supported by a declaration under the penalty of perjury which establishes that the evidence: (1) was not previously available; (2) could not have been discovered prior to the hearing with the exercise of reasonable diligence; (3) was submitted within a reasonable time of its discovery; (4) is relevant to the issues sought to be reconsidered; and (5) impacts or alters the decision of the previously decided case.

Because reconsideration may only be granted under “extraordinary circumstances,” the Board applies the regulation’s criteria strictly. (*Regents of the University of California* (2000) PERB Decision No. 1354a-H.) A request for reconsideration “is not simply an opportunity to ask the Board to ‘try again.’” (*Chula Vista Elementary School District* (2004) PERB Decision No. 1557a.) PERB Regulation 32410, subdivision (a), allows a party to request reconsideration of a Board decision only on two grounds: (1) the decision contains “prejudicial errors of fact;” or (2) previously unavailable and undiscoverable newly discovered evidence that is both relevant and submitted within a reasonable time of discovery would

³ PERB Regulations can be found at California Code of Regulations, title 8, section 31001, et seq.

impact or alter the decision. These limited grounds preclude a party from using the reconsideration process to reargue or re-litigate issues that have already been decided. (*Redwoods Community College District* (1994) PERB Decision No. 1047a). Simply arguing the same facts that were presented on appeal does not fulfill the requirements of PERB Regulation 32410. (*Oakland Unified School District* (2004) PERB Decision No. 1645a.) A disagreement over the legal analysis employed by the Board is not grounds for reconsideration even if it amounts to a prejudicial error of law resulting from application of its own case law. (*California State Employees Association (Hurd, et al.)* (2002) PERB Decision No. 1479a-S.)

The instant request neither identifies prejudicial errors of fact nor presents newly discovered evidence. There are no other grounds for reconsideration. On that basis alone, the Board denies the request.

As stated earlier, Local 39 takes exception to the Board's remedial order. Local 39's submission asserts in pertinent part:

That order, rather than requiring a return to the status quo which the PERB deemed to be inappropriate because a proper petition to modify the General Unit had been filed, seems to permit the continuance of the new status quo brought about by the County's violation of its own rules. Further confusion is caused by reason of the fact that the County has also ordered that the employees involved be made whole for any loss of wages or benefits by having been merged into the YCPA represented unit. The peace officers involved have suffered a loss in pay and/or benefits as a result of the action.

It is submitted that even though the removal of the peace officers from the General Unit was appropriate, it was untimely until there was some place for them to go. That would be logically consistent. Thus, a correct status quo order would be to return the classifications to the General Unit until the peace officers in question were given an opportunity to select a destination pursuant to the Rules of the County of Yolo.

[¶] . . . [¶]

In summary, the Charging Party seeks an order restoring the status quo by returning the classifications to the General Unit pending the filing of an appropriate motion for the disposition of the classifications in question and further ordering that the employees be made whole for any losses suffered by reason of the illegal action of the Board of Supervisors.

Pursuant to section 3509, subdivision (a), the powers and duties of PERB as described in section 3541.3 of the Educational Employment Relations Act (EERA)⁴ shall apply to unfair practice proceedings under the MMBA. Section 3541.3 empowers PERB to “take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.”

In determining an appropriate remedy in a particular case, the Board is neither bound by nor limited to the remedy requested by the charging party. Although Local 39 acknowledges peace officers’ right to a separate unit, it nonetheless continues to press for return of the peace officer classifications to the General Unit. Local 39 claims that the removal of the peace officers classifications from the General Unit “was untimely until there was some place for them to go.” YCPA’s representation petition, however, was timely filed and fully compliant with the County’s local rules in all respects including the requisite proof of support and content. In determining that the Board of Supervisor’s action in merging the Probation Department peace officers with the YCIA-represented investigators unit was unlawful for lack of an YCIA-initiated petition requesting such action, the Board did not leave the peace officers with nowhere to go or in a confused new status quo. The YCPA petition was *both* a petition for modification and recognition. Recognition of YCPA as the exclusive representative of the Probation Department peace officers attached upon modification of the General Unit by the Board of Supervisors at its meeting of November 9, 2010. (*County of Yolo, supra*, PERB Decision No. 2316-M, p. 23, fn. 19.)

⁴ EERA is codified at section 3540 et seq.

In reaching this conclusion, the Board highlighted two essential points. First, peace officers' right to a separate unit is absolute. It derives from statute and cannot be abrogated by a public agency in the exercise of local authority. (MMBA, § 3508.) Second, the reasonableness of the County's local rules is not in dispute. The County's local rules provide that decisions on appeal to the Board of Supervisors are final and binding.

The County's employee relations officer denied the YCPA petition in violation of MMBA section 3508. At the meeting of November 9, 2010, the Board of Supervisors corrected that error, in part, by removing the peace officers from the General Unit. It also compounded that error, in part, by merging them into the YCIA-represented unit of investigators. Had the Board of Supervisors not compounded the error and instead simply decided to grant YCPA's petition for modification and recognition on appeal from the employee relations officer's denial, that decision would have been final and binding under the County's local rules. By our decision, we place Local 39 in no better position than the position in which it would have been had the Board of Supervisors acted in a manner consistent with its statutory obligations under section 3508. That obligation was to guarantee the Probation Department peace officers their absolute, statutorily-guaranteed, right to separate representation.

In sum, we conclude that the Board's decision in *County of Yolo, supra*, PERB Decision No. 2316-M balances the rights of peace officers with the obligation of public agencies to administer representation proceedings under their local rules. Neither party disputed that the YCPA petition complied in full with the County's local rules. Thus, the County, through the actions taken by its Board of Supervisors on November 9, 2010, had no option under MMBA section 3508 but to reject the recommendation of the employee relations officer and grant the petition. Returning the peace officer classifications to the General Unit

under these circumstances would be to order a remedy that fails to effectuate the purposes or policies of the MMBA as it concerns the rights of peace officers.

ORDER

Stationary Engineers Local 39, International Union of Operating Engineers, AFL-CIO's request for reconsideration of the Board's decision in *County of Yolo* (2013) PERB Decision No. 2316-M is hereby DENIED.

Members Huguenin and Banks joined in this Decision.